

LUIS FRANCISCO, PETITIONER, VS. FRANCISCO ZANDUETA, JUDGE OF FIRST INSTANCE OF MANILA, AND EUGENIO LEOPOLDO FRANCISCO, REPRESENTED BY HIS NATURAL MOTHER AND CURATOR AD LITEM, RO...

G.R. No. L-43794. August 09, 1935

Ponente: GODDARD, J.

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GODDARD, J.:

This is an original petition for the writ of certiorari whereby the petitioner, Luis Francisco, seeks to procure the abrogation of an order of the respondent judge, dated May 2, 1935, granting the respondent, Eugenio Leopoldo Francisco, a monthly pension of P30 pendente lite.

It appears that the respondent, Eugenio Leopoldo Francisco, aged two years, through his natural mother and guardian ad litem, Rosario Gomez, instituted an action for support against the herein petitioner in the Court of First Instance of the City of Manila, case No. 47238. . In that case it is alleged that the therein plaintiff is the acknowledged son of Ijuis Francisco and as such is entitled to support. The petitioner, as defendant in that case, answered by a general denial of each and every material allegation contained in the complaint and as a special defense alleged that he never acknowledged and could not have acknowledged the plaintiff as his son; that he was not present at the baptism of the plaintiff and that he was married at the time it is alleged that the plaintiff was born.

Notwithstanding this denial of paternity the respondent judge issued the order of May 2, 1935. On May 11, 1935, petitioner moved for the reconsideration of that order on the ground that it was issued in excess of jurisdiction in view of the fact that the civil status of the plaintiff was placed in issue by the pleadings; that the plaintiff has no right to monthly support from the defendant until his status as a child of the latter is finally determined in his favor and that as the guardian ad litem of the plaintiff admits his lack of means to defray even the ordinary expenses of existence it would be impossible for the defendant to recover whatever amount he may have advanced to plaintiff as support pendente lite, should it finally be decided that he is not the father of the plaintiff.

The respondent judge, the Honorable Francisco Zandueta, denied that motion, hence the institution of this special proceeding.

This court called upon the respondents to answer the petition. They filed a joint answer and alleged, in substance, that case No. 47238 was set for trial the 29th of April, 1935, and that the attorney for the defendant in that case filed a motion on April 22, 1935, in which he prayed that the trial be transferred; that the hearing on this motion was set for April 27, 1935; that the attorney for the minor filed a motion, on the day set for the hearing of the motion to transfer, in which he prayed that said minor be granted the sum of P30 per month by way of support, pendente lite; that the guardian ad Utem opposed the motion to transfer the trial and that after discussion the attorney of the herein petitioner in order to secure a transfer agreed that his client would pay the minor a pension of P30 per month during the pendency of that case, No. 47238. The answer of the respondents is supported by the

affidavits of the respondent judge and two deputy clerks of the Court of First Instance of Manila.

In petitioner's reply to respondents' answer, made under oath by the attorney for the petitioner, in case No. 47238 and in this proceeding, it is alleged that the statements in paragraph five of said answer and those in the affidavits, Exhibits A and B, as to the agreement of said attorney to the payment of P30 as monthly support, are absolutely false.

In order to arrive at a proper solution of this case it is not necessary to consider the dispute as to whether or not the attorney for the herein petitioner really agreed that his client should pay P30 per month by way of support to the plaintiff, pendente lite.

In the case of *Yangco vs. Rohde* (1 Phil., 404) the petitioner Yangco filed in this court a petition for a writ of prohibition, alleging that a complaint had been filed, before the respondent judge, by Victorina Obin against the petitioner praying that she be granted a divorce, a monthly allowance for alimony and attorney's fees during the pendency of the suit; that the said judge ordered the petitioner to pay the plaintiff a monthly allowance of two hundred fifty Mexican pesos; that the plaintiff in the said action owns no property and that the respondent judge acted in excess of his jurisdiction in attempting to oblige the petitioner to pay Victorina Obin said allowance.

In that case this court, speaking through Chief Justice Arellano, said:

"In the present case the action for the support or alimony is brought by a woman who alleges that she is a wife; therefore it is necessary for her to prove possession of the civil status of a spouse—that is, a marriage, without which one has no right to the title of husband or wife, * * *.

"This evidence being lacking, and the civil status of marriage being in litigation, it is evident that nothing can be taken for granted upon the point in issue. There is no law or reason which authorizes the granting of alimony to a person who claims to be a spouse in the same manner as to a person who conclusively establishes by legal proof that he or she is such a spouse, and sues for divorce or separation. In this case the legal evidence raises a presumption of law; in the former there is no presumption, there is nothing but a mere allegation—a fact in issue—and a simple fact in issue must not be confounded with an established right recognized by a final judgment or based upon a legal presumption. The civil status of marriage being denied, and this civil status, from which the right to support is derived, being in issue, it is difficult to see how any effect can be given to such a claim until an authoritative declaration has been made as to the existence of the cause. It is evident that there is of necessity a substantial difference between the capacity of a person after the rendition of a final judgment in which that person is declared to be in possession of the status of marriage and his capacity prior to such time when nothing exists other than his suit or claim to be declared in possession of such status of marriage * * *."

Under article 143 of the Civil Code the following are bound to support each other: (1) Husband and wife, (2) legitimate ascendants and descendants, (3) parents and acknowledged natural children and the legitimate descendants of the latter, (4) parents and illegitimate children not having the legal status of natural children and (5) brothers and sisters. In all these cases it is a civil status or a juridical relation which is the basis of the action for support, the civil status of marriage or that of relationship.

Paraphrasing the language used in the decision in the *Yangco* case it may be said that in the present case the action for support is brought by a minor, through his guardian ad Utem, who alleges that he is the son of the petitioner; therefore it is necessary for him to prove his civil status as such son. His alleged civil status being in litigation, it is evident that nothing can be taken for granted upon the point in issue. There is no law or reason which authorizes the granting of support to a person who claims to be a son in the same manner as to a person who establishes by legal proof that he is such son. In the latter case the legal evidence raises a presumption of law, while in the former there is no presumption, there is nothing but a mere allegation, a fact in issue, and a simple

fact in issue must not be confounded with an established right recognized by a final judgment.

The civil status of sonship being denied and this civil status, from which the right to support is derived, being in issue, it is apparent that no effect can be given to such a claim until an authoritative declaration has been made as to the existence of the cause. It is also evident that there is a substantial difference between the capacity of a person after the rendition of a final judgment in which that person is declared to be in possession of the status of a son and his capacity prior to such time when nothing exists other than his suit or claim to be declared in possession of such a status. The Civil Code grants the right of support to a son. This status not appearing by a final judgment, the respondent judge was without jurisdiction to order the petitioner, as defendant in case No. 47238, to pay the plaintiff the sum of P30, or any other amount as monthly support, pendente lite.

In view of the lack of jurisdiction of the respondent judge to grant the plaintiff support, pendente lite, it is evident that the attorney of the defendant in case No. 47238 could not by his alleged consent to the granting of such support give the trial judge jurisdiction to adjudicate such a claim against his client.

"It is a universal rule of law that parties cannot, by consent, give a court, as such, jurisdiction in a matter which is excluded by the laws of the land. In such a case the question is not whether a competent court has obtained jurisdiction of a party triable before it, but whether the court itself is competent under any circumstances to adjudicate a claim against the defendant. And where there is want of jurisdiction of the subject-matter, a judgment is void as to all persons, and consent of parties can never impart to it the vitality which a valid judgment derives from the sovereign state, the court being constituted, by express provision of law, as its agent to pronounce its decrees in controversies between its people." (7 R. C. L., 1039.)

The writ prayed for is granted and the order of the respondent judge of May 2, 1935, ordering the herein petitioner as defendant in case No. 47238 to pay the plaintiff in that case the sum of P30 monthly, as support, pendente lite, is hereby declared null and void, without costs.

Avanceña, C.J., Villa-Real, Abad Santos, Hull, Imperial, Diaz, and Recto, JJ., concur.

CONCURRING

VICKERS, J.,

I concur in the result. I wish to state, however, that I do not agree with the rule laid down in the case of Yangco vs. Rohde (1 Phil., 404). I think that a correct statement of the law is to be found in the dissenting opinion of Justice Cooper. According to the doctrine of that case, if the defendant denies in his answer the fact of marriage, the court exceeds its jurisdiction in granting alimony pendente lite. This puts it within the power of the defendant to prevent the plaintiff from recovering alimony pendente lite in any case, notwithstanding the fact that the plaintiff may present at the hearing of her petition conclusive evidence of the existence of the marriage.

In the case at bar it does not appear that the mother of the child presented any evidence to sustain her petition for support pendente lite, although the trial judge stated in his order of May 2, 1935 that he found the petition to be well founded (Men fundada). Respondents now claim that said order was based upon an agreement of defendant's attorney to the effect that if the trial of the case was transferred defendant would pay P30 a month for the support of the child during the pendency of the action. In my opinion we have no right to take into consideration the affidavits presented in this court by the respondents for the purpose of showing that the order for the payment of the support pendente lite was based on an agreement of defendant's attorney and not on the reasons stated in the order in question; and since the plaintiff did not attempt to prove that he was entitled to support pendente lite, the

action of the respondent judge in ordering the payment of support under those circumstances was arbitrary and a manifest abuse of his discretion, for which the right of appeal is not an adequate remedy.

Malcolm, and Butte, JJ., dissent.

Writ granted.

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